

KAREN P. HEWITT
 United States Attorney
 CHARLOTTE E. KAISER
 Assistant United States Attorney
 California State Bar No. 256356
 United States Attorney's Office
 Federal Office Building
 880 Front Street, Room 6293
 San Diego, California 92101
 Telephone: (619) 557-7031

Attorneys for Plaintiff
 UNITED STATES OF AMERICA

FILED

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CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 DEPUTY
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

08cr 2274-DMS

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH MICHAEL FAH,

Defendant.

Magistrate Case No. 08MJ1949

**STIPULATION OF FACT AND JOINT
 MOTION FOR RELEASE OF
 MATERIAL WITNESS(ES) AND
 ORDER THEREON**

(Pre-Indictment Fast-Track Program)

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Charlotte E. Kaiser, Assistant United States Attorney, and defendant KENNETH MICHAEL FAH, by and through and with the advice and consent of defense counsel, Frank M. Murphy, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C. § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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CEK:mg:6/30/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **July 25, 2008**.

6 4. The material witnesses, Moises Rodriguez, Dolores Asuncion Garcia-Lucas and
7 Gabriela Rodriguez-Mena, in this case:

- 8 a. Are aliens with no lawful right to enter or remain in the United States;
9 b. Entered or attempted to enter the United States illegally on or about
10 June 24, 2008;
11 c. Were found in a vehicle driven by defendant at the San Ysidro, California Port
12 of Entry (POE) and that defendant knew or acted in reckless disregard of the fact that they were
13 aliens with no lawful right to enter or remain in the United States;
14 d. Were paying or having others pay on their behalf \$2,000 - \$3,600 to others
15 to be brought into the United States illegally and/or transported illegally to their destination therein;
16 and,
17 e. May be released and remanded immediately to the Department of Homeland
18 Security for return to their country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
22 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

- 23 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
24 substantive evidence;
25 b. The United States may elicit hearsay testimony from arresting agents
26 regarding any statements made by the material witness(es) provided in discovery, and such testimony

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ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 7/10/08


United States Magistrate Judge

1 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
2 of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
4 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
5 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
6 waives the right to confront and cross-examine the material witness(es) in this case.

7 6. By signing this stipulation and joint motion, defendant certifies that defendant has
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
9 further that defendant has discussed the terms of this stipulation and joint motion with defense
10 counsel and fully understands its meaning and effect.

11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
12 immediate release and remand of the above-named material witness(es) to the Department of
13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.

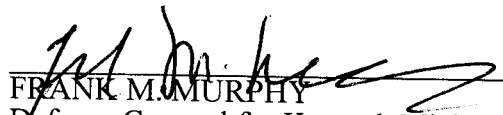
15 Respectfully submitted,

16 KAREN P. HEWITT
17 United States Attorney

18 Dated: 7/10/08.

19 
20 CHARLOTTE E. KAISER
21 Assistant United States Attorney

22 Dated: 7/1/08.

23 
24 FRANK M. MURPHY
25 Defense Counsel for Kenneth Michael Fah

26 Dated: 7/1/08.

27 
28 KENNETH MICHAEL FAH
Defendant